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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,721	08/13/2001	Knut M. Rapp	P/2107-187	7253
2352	7590	12/03/2003	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			CORBIN, ARTHUR L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/928,721

Applicant(s)

RAPPET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-22 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-22 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☒ All ☐ Some* ☐ None of the:

- ☒ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 9 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 is indefinite since it is not known what is intended by "another lumpy food product". There is no antecedent basis in claim 1 for "the chewing gum" (claim 20).

Corrections are required without new matter.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7 and 9-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al (WO 95/07622) in view of Japanese patent (abstract) 04121162.

Reed et al teaches a hard-coated chewing gum product including a core and at least one coating. The coating is composed of a sweetener which includes two or more polyols. The coating may include lactitol, maltitol, hydrogenated isomaltulose and erythritol. (WO 95/07622, page 1, line 13). Reed et al teaches that the hydrogenated isomaltulose is made and sold under the trademark PALATINIT (WO 95/07622, page 5, lines 29-35). PALATINIT contains a mixture of 1, 6-GPS (glucopyranosyl-1, 6-sorbitol) and 1, 1-GPM. Further, Reed et al teaches that any number of coats may be added to

the product WO 95/07622, page 18, line 28). A variety of ingredients may be added to the product, such as calcium carbonate fillers (WO 95/07622, page 3, lines 15-25); film-forming agents, such as gelatin and gum arabic (WO 95/07622, page 18, line 28); artificial sweeteners, such as aspartame and saccharin (WO 95/07622, page 13, line 11); and dispersing agents, such as titanium dioxide (WO 95/07622, page 13, line 22).

Although Reed et al teaches a 1,6-GPS enriched coated food product, Reed et al is silent as to the amount of 1,6-GPS in the coating. JP 04121162 (abstract) teaches that a sweetener component can be provided that has a mixture of 1,6-GPS and isomaltulose with a ratio of 1:15 to 15:1. The Japanese reference teaches that it is desirable to have such sweetener, as the sweetness is half that of sucrose and possesses low tooth decaying properties (JP 04121162, abstract).

It would have been obvious to provide Reed et al with the sweetener of the Japanese reference since said sweetener has low tooth decay properties and a good quality of sweetness.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al in view of the Japanese reference as applied to claims 1-7, 9, 17-19, 27-34 and 36 above, and further in view of Herzing et al (4,464,411, column 1, line 32).

Herzing et al teaches that polyoxyethylene sorbitan monostearate (polysorbate 60) can be used in a confectionery coating (US Patent 4,464,411, column 1, line 32).

It would have been obvious to provide the product in Reed et al, as above modified, with a polysorbate coating because polysorbate inhibits bloom from forming in the coating, as taught by Herzing.

6. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reed et al in view of the Japanese reference as applied to claim 1-7, 9, 17-19, 27-34 and 36 above, and further in view of Serpelloni et al (5,571,547, column 5, lines 1-10).

Serpelloni et al teaches that an isomalt-like coating can be used with chocolate. It would have been obvious to provide the product in Reed et al, as above modified, with the use of an isomalt-like coating in chocolate, as the isomalt-like coating increases the hardness of the coating.

7. This is a continuation of applicant's earlier Application No. 09/030,295. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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8. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
November 25, 2003



ARTHUR L. CORBIN
PRIMARY EXAMINER
12-1-03